



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2013-0972]

RIN 1625-AA09

Drawbridge Operation Regulation; Bush River, Perryman, MD

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs the Amtrak Bridge, at mile 6.8 over Bush River, at Perryman, MD. The rule updates the language of the regulation to reflect the intent of the original schedule and change the interim rule as final.

DATES: This rule is effective [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2013-0972. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You

may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this final rule, call or e-mail Mr. Jim Rousseau, Bridge Management Specialist, Coast Guard, telephone (757) 398-6557, e-mail James.L.Rousseau2@uscg.mil. If you have questions on reviewing the docket, call Cheryl Collins, Program Manager, Docket Operations, (202)366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
§	Section Symbol
U.S.C.	United States Code

A. Regulatory History and Information

On May 1, 1985, an interim rule was published (50 FR 18480) that changed the operating schedule of the Amtrak Bridge, at mile 6.8 over Bush River, at Perryman, MD. The comment period for this interim rule ended on June 14, 1985

and records indicate that no comments were received. The interim rule was never finalized and the proposed modification to the rule has remained in effect. Because the length of time the interim rule has been in effect, the Coast Guard opened a new comment period.

On February 14, 2014, the Coast Guard published a NPRM titled Drawbridge Operation Regulation; Bush River, Perryman, MD in the FR (79 FR 8911). The Coast Guard received no comments on the proposed rule. No public meeting was requested, and none was held.

The interim operating regulation, in 33 CFR 117.547, required the bridge to open twice a day on the weekends during the summer boating season and on one weekend in October. However, it failed to clarify that the bridge would remain closed to navigation at all other times, which was the intent of the bridge owner and how the bridge has operated since 1985. As the interim regulation was written, the bridge was actually required to open on demand at all other times; which was impractical given that the bridge is part of a high speed rail line and requires a maintenance crew of ten to physically open to navigation.

B. Basis and Purpose

The Amtrak Bridge is a single-leaf bascule bridge with a vertical clearance of approximately 12 feet above mean

high water in the closed position. Due to the overhead power lines, the bridge has a vertical clearance of approximately 34 feet above mean high water in the open position.

The Amtrak Bridge had operated under the interim rule for over 28 years with little to no disagreements between the bridge owner, the waterway users, and local marinas. However, in 2011 Amtrak approached the Coast Guard with an issue on how they were receiving requests to open the bridge from the waterway users. As the Coast Guard reviewed the regulation in 33 CFR 117.547 the difference between the actual language and the intent of the regulation, identified in paragraph A, was brought to light. The Coast Guard proposed to modify the existing regulations for the Amtrak Bridge to clarify the original language and intent of the regulation.

The Coast Guard has reviewed and discussed the original and perceived intent of the current regulation with Amtrak and local waterway users. Based on the information provided, the final rule will correct the current language discrepancy in the regulation but have no impacts on current vessel or train traffic.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard received no comments in response to

the notice of proposed rulemaking. As a result, no changes have been made to this final rule.

D. Regulatory Analyses

The Coast Guard developed this rule after considering numerous statutes and executive orders related to rulemaking. Below Coast Guard summarize our analyses based on these statutes or executive orders

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This change is expected to have no impact on mariners and no anticipated change to vessel and train traffic.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are

independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities

This action will not have a significant economic impact on a substantial number of small entities for the following reasons. Vessel requests requiring openings for the past years have been based on the final regulation intent of only opening during May through October after coordination with Amtrak. Vessels that can safely transit under the bridge may do so at any time.

3. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

4. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of

government. The Coast Guard have analyzed this rule under that Order and have determined that it does not have implications for federalism.

5. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

6. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, Coast Guard do discuss the effects of this rule elsewhere in this preamble.

7. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order

12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

8. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

9. Protection of Children

The Coast Guard have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

10. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

11. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

12. Technical Standards

This rule does not use technical standards. Therefore, Coast Guard did not consider the use of voluntary consensus standards.

13. Environment

Coast Guard have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves the change to the operating schedule for the S37 Barnegat Bay Bridge in order to accommodate necessary repair. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a

categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Revise §117.547, to read as follows:

§ 117.547 Bush River.

The draw of the Amtrak Bridge, mile 6.8 at Perryman, shall operate as follows:

(a) Shall open twice a day from May 1 through October 31, on Saturdays, Sundays, and Federal holidays that fall on a Friday or a Monday, when a proper request has been received.

(b) Request for an opening is given to the Amtrak Assistant Division Engineer at 410-642-1588 and or e-mail at BridgeOpeningRequest@Amtrak.com by an authorized representative of the Bush River Yacht Club no later than noon on the Friday just preceding the day of opening or, if

that Friday is a Federal holiday, no later than noon on the preceding Thursday.

(c) Amtrak determines the times for openings and shall schedule the times:

(1) During daylight hours, six to ten hours apart;
and

(2) One opening before noon and one after noon.

(3) In emergent situations after notification is given to the numbers indicated in paragraph (b) of this section it can take up to six hours for the bridge to open.

(d) Amtrak shall notify a representative of the Bush River Yacht Club of the times of all openings for the weekend (or extended weekend) in question no later than 6 p.m., on the Friday just preceding the weekend or, if that Friday is a Federal holiday, no later than 6 p.m., on the preceding Thursday.

(e) Each opening shall be of sufficient duration to pass waiting vessels.

(f) At all other times the draw need not open for the passage of vessels.

Dated: May 16, 2014.

Stephen P. Metruck,
Rear Admiral, U.S. Coast Guard,
Commander, Fifth Coast Guard District.

[FR Doc. 2014-12374 Filed 05/28/2014 at 8:45 am;
Publication Date: 05/29/2014]